

wide area or serious damage from catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads that are not part of the Federal-aid highways is contained in 23 CFR part 668, subpart B.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

**§ 668.103 Definitions.**

In addition to others contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

*Applicant.* The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highways.

*Catastrophic failure.* The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

*Emergency repairs.* Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

- (1) Minimizing the extent of the damage,
- (2) Protecting remaining facilities, or
- (3) Restoring essential travel.

*External cause.* An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions.

*Heavy maintenance.* Work usually done by highway agencies in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences. It includes work at a site required as a direct result of a disaster which can reasonably be accommodated by a State or local road authority's maintenance, emergency or contingency program.

*Natural disaster.* A sudden and unusual natural occurrence, including but not limited to intense rainfall, floods, hurricanes, tornadoes, tidal waves, landslides, volcanoes or earthquakes which cause serious damage.

*Proclamation.* A declaration of emergency by the Governor of the affected State.

*Serious damage.* Heavy, major or unusual damage to a highway which severely impairs the safety or usefulness of the highway or results in road closure. Serious damage must be beyond the scope of heavy maintenance.

*State.* Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

**§ 668.105 Policy.**

(a) The Emergency Relief (ER) program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) ER funds are not intended to supplant other funds for correction of pre-existing, nondisaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The approval to use available ER funds to repair or restore highways damaged by a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) ER funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State or political subdivision or by a toll authority for repair of the highway facility must be used upon receipt to reduce ER fund liability on the project.

(f) Prompt and diligent efforts shall be made by the State to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, or vehicles with illegal loads or where damage is increased by improperly controlled objects or events.

(g) The processing of ER requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) ER projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA.

(i) Permanent repair and reconstruction work, not accomplished as emergency repairs, shall be done by the contract method unless the State Highway agency adequately demonstrates that some other method is more cost effective as described in 23 CFR 635.204. Emergency repair work may be accomplished by the contract, negotiated contract or highway agency force account methods as determined by the Highway agency as best suited to protect the public health and safety.

(j) ER program funding is only to be used to repair highways which have been seriously damaged and is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs. An application for ER funds in the range of \$500,000 or less must be accompanied by a showing as to why the damage repair involved is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, widespread nominal road damages in this range would not be considered to be of a significant nature justifying approval by the FHWA Administrator for ER funding.

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#### **§ 668.107 Federal share payable.**

(a) The Federal share payable on account of any repair or reconstruction

provided for by funds made available under 23 U.S.C. 125 of this title on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in 23 U.S.C. 120; except that the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof.

(b) Total obligations of ER funds in any State, excluding the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands, for all projects (including projects on both the Federal-aid systems and those on Federal roads under 23 CFR part 668, subpart B), resulting from a single natural disaster or a single catastrophic failure, shall not exceed \$100 million per disaster or catastrophic failure. The total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall not exceed \$20 million. Upon receipt of the field reports and estimates, allocations of available funds will be made by FHWA Headquarters in Washington, DC.

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#### **§ 668.109 Eligibility.**

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements as necessary to restore the facility to pre-